Old No. F.A.F.O. 553 of 1999

COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 93 of 2001

U.P.S.R.T.C.
And another **..... Appellants.**

Versus

Smt. Urmila Rani
and others.

.....Respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Admit.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, (in short the Act) against the judgment and Award dated 7-9-1993 passed in M.A.C. Petition No. 48 of 1994, Smt. Urmila Rani and others Vs. U.P.S.R.T.C. and another, by Motor Accident Claims Tribunal/District Judge, Almora (in short the Tribunal), whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 5,01,068/- as compensation along with interest @ 12 % per annum, as mentioned in the impugned order, in favour of the claimants-respondents under Section 166 of the Act. Aggrieved, the owner-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal on the ground that the accident in question was not the result of rash and negligent on the part of driver of the appellant, but the motor accident was the result of contributory negligence and the Tribunal has failed to appreciate the evidence on the point of income of the deceased and the interest awarded is excessive.

Brief facts of the case are that on 24.4.1994 at about 1 p.m. Dinesh Prakash Goyal (the deceased) aged 55 years, was

coming back to Almora from Suyalbari by Scooter No. U.P.-01-831 along with one Deoki Nandan of U.P. P.W.D. When he reached near village Chausali, offending bus No. U.G.P.-4974, driven rashly and negligently by its driver hit the scooter, with the result the deceased sustained grievous injuries and died on the spot and Deoki Nandan also succumbed to his injuries in the hospital, Deceased was working as Assistant Engineer in U.P., Public Works Department and was getting monthly salary of Rs. 8600/- per month. F.I.R. of the accident was lodged at the police station. Post Mortem of the dead body was also conducted in the hospital. Hence the petition by the dependents and legal heirs of the deceased.

The Opposite Party Nos. 1 and 2, the owner and driver of the bus in question, contested the claim petition by filing joint written statement. They have admitted the accident, but alleged that when the bus was driven from Alomra to Bareilly, at place Chausali, the scooter No. U.P.01-831 with two persons came from the opposite direction. The O.P. No. 2 applied emergency brakes, therefore, the bus tilted towards right side. The driver came out and saw two scooter riders were hurt. They were rushed to Base Hospital Almora by the driver of the bus and information to the police and departmental authorities was also given. It as been alleged that there was no negligence on the part of bus driver, rather the accident was the result of the negligence of the scooterists , who were in the state of intoxication, therefore, the O.Ps. are not liable to pay compensation.

The learned Tribunal framed two issues in the case. Issue No. 1 related to rash and negligent driving by the driver of the offending bus resulting into injuries and death of the deceased. Issue No.2 related to the relief.

The learned Tribunal after considering the evidence on record, found on Issue No. 1 that the accident in question was

caused due to rash and negligent driving by the driver of the offending bus. On Issue No.2, the learned Tribunal found that the deceased was running 55 years of age as he was born on 22.6.1939 as disclosed from paper no. 14-C, Ext. 1. As regards income of the deceased, the learned Tribunal found that the total income of the deceased during the year April 1993 to March 1994 was Rs. 88,310/- and after deductions, his net income was Rs. 68,625-80, therefore, his average income per month was Rs. 5,719/- Deceased had four sons and one of them was employed. From the family structure, the learned Tribunal found that the family of the deceased consisted 13.5 units, therefore, the expenses per unit has been determined 5,719/- divided by 13.5, which comes to Rs. 424/- approximately. The expenses of the deceased were worked out as Rs. 848/-, i.e. two units and personal expenses were assessed at Rs. 250/-. Thus, the monthly loss of income has been assessed at Rs. 4621/- or say Rs. 55,452/- per annum. Considering the age of the deceased, multiplier of 9 was applied for determination of compensation, thereby amount of Rs. 4,99,068/- were fixed as compensation. The Tribunal has also awarded Rs. 2,000/- towards funeral expenses, therefore, total compensation has been determined as Rs. 5,01,068/-. Accordingly, the Tribunal has awarded compensation of Rs. 5,01,068/- along with interest @ 12% per annum. It was also held that the accident was caused by the O.P. No. 2 during the course of his employment, therefore, the U.P.S.R.T.C..- appellant was directed to pay the entire compensation interest, etc. as ordered under the impugned order.

We have heard learned counsel for the appellant, Mr. A.N. Sharma, at length and have carefully gone through the entire material on record including the impugned judgment and award.

It has been argued on behalf of the appellant that in the present case, the accident was the result of contributory negligence and the learned Tribunal has failed to appreciate the evidence on record, therefore, the impugned judgment and award is liable to be

set aside. We have perused the entire record and we find that from the statement of driver, who has been examined as D.W. 1 has admitted in his cross-examination that one of the wheels of the bus had gone out of the road, at the place of accident. Moreover, from the record, it does not appear that the driver of the bus had lodged any F.I.R., though the Opposite Parties have taken such a plea. It has also not been substantiated that the bus driver informed about the accident to his higher authorities stating about the mistake of the scooter riders. The assertions of the written statement are not supported by the evidence of the driver D.W.1. Plea regarding influence of liquor on the scooterists is not at all corroborated by any supporting evidence. The evidence of the driver himself is not consistent enough to lead us to hold that the accident in question was the result of the contributory negligence, rather we are of the view that the finding of the Tribunal that the motor accident resulting into injuries and consequent death of the deceased was caused due to rash and negligent driving of the driver of the offending bus, owned by the appellant. Accordingly, we do not find any reason to interfere with the finding arrived at by the Tribunal on Issue No.1.

It has been next submitted on behalf of the appellant that the learned Tribunal has not properly appreciated the evidence on the point of income of the deceased thereby the compensation awarded is excessive. From a perusal of the entire evidence on record, it is clear that the deceased Dinesh Prakash Goyal was working as Assistant Engineer in the Public Works Department. Paper Nos. 15-C/3 is the statement of drawals and deductions of the deceased during the year 1993-94. This statement is duly verified. The appellant has neither challenged the veracity of this paper, nor has shown any evidence to the contrary to dispute that the deceased was not earning the salary etc. as mentioned in this statement. Moreover, the date of birth of the deceased has not been seriously disputed. Further, the date of birth of the deceased, i.e. 22.6.1939 stands proved on record from a perusal of Ext. 1 filed on behalf of

the claimant-respondents. Learned counsel for the appellant could not indicate any discrepancy regarding age and income of the deceased as well as about dependency of the deceased. The learned Tribunal has elaborately discussed the entire evidence before determining the amount of compensation. The contention of the appellant that the age of the deceased was 55 years and he would have remained in service for further period of three yearly only, therefore, the multiplier of 9 should not have been applied in the present case is not at all convincing. Considering the age and income of the deceased, the Tribunal has rightly applied multiplier of 9 in determining the just amount of compensation. We are unable to take a different view on this point. We have already narrated the method applied by the Tribunal for working out the just amount of compensation in the earlier part of this judgment and we do not find any infirmity or illegality in the findings of the Tribunal. The amount of Rs. 5,01,068/- along with interest @ 12% per annum appears to be just compensation, therefore, there is nothing on record so as to warrant any interference with the findings of the Tribunal in the present case. We have no option but to uphold the judgment and award under appeal. The appeal has no merit and is liable to be dismissed.

The appeal is dismissed. Impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned. The Tribunal shall inform the claimant-respondents to withdraw the amount of award, if any.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP